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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1470**

Maurice LaVarne Graham, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed February 24, 2014
Affirmed
Rodenberg, Judge**

Hennepin County District Court
File No. 27-CR-98-074631

Maurice LaVerne Graham, Faribault, Minnesota (pro se appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jean E. Burdorf, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Cleary, Chief Judge, Presiding; Johnson, Judge; and
Rodenberg, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant Maurice LaVarne Graham challenges the district court's summary
denial of his motion to correct a clerical mistake in his sentence under Minn. R. Crim. P.
27.03, subd. 10. We affirm.

FACTS

This is Graham's third postconviction appeal. In 1999, Graham was convicted of attempted first-degree murder, kidnapping, second-degree assault, two counts of criminal sexual conduct, and terroristic threats. In 2007, Graham petitioned for postconviction relief. The district court corrected an error in the offense severity level and reduced Graham's sentence, and we affirmed Graham's convictions and sentence. *Graham v. State*, No. A08-1062, 2009 WL 2366071, at *7 (Minn. App. Aug. 4, 2009), *review denied* (Minn. Oct. 20, 2009). The facts surrounding Graham's convictions are thoroughly set forth in our 2009 opinion, *id.* at *1-2, and we need not recount them here.

In 2011, Graham moved for correction of an unauthorized sentence under Minn. R. Crim. P. 27.03, subd. 9, asserting that his sentence was illegal. His motion, treated as a petition for postconviction relief, was denied by the district court on procedural grounds, and Graham appealed. We held that the district court did not err either in treating Graham's motion as a petition for postconviction relief or in concluding that Graham's claim was procedurally barred under *Knaffla*. *Graham v. State*, No. A12-0248, 2012 WL 3263903, at *1-2 (Minn. App. Aug. 13, 2012) (*Graham II*), *review denied* (Minn. Oct. 24, 2012).

On April 17, 2013, Graham filed the present motion to correct a clerical mistake in his sentence under Minn. R. Crim. P. 27.03, subd. 10. Specifically, Graham challenged the way his convictions were merged at his 2007 resentencing, arguing that it contradicted the original 1999 merger of his convictions. The district court again construed Graham's motion as a petition for postconviction relief under Minn. Stat.

§ 590.01 (2012). The district court concluded that, because the claimed clerical mistake arose during Graham’s 2007 resentencing, Graham could have raised the issue in his first appeal in 2009. Therefore, Graham’s claim was procedurally barred under *Knaffla*. Moreover, the district court noted that Graham failed to raise the clerical mistake issue “within two years of the date the claim [arose],” as required by Minn. Stat. § 590.01, subd. 4(c). The district court concluded that Graham was “entitled to no relief” and that “no evidentiary hearing [was] required.” This appeal followed.

DECISION

In the appeal from *Graham II*, the district court treated Graham’s rule 27.03 motion as a petition for postconviction relief under Minn. Stat. § 590.01 (2006). We affirmed the district court, relying on supreme court authority that a motion to correct a sentence under Minn. R. Crim. P. 27.03, subd. 9, may be treated as a petition for postconviction relief. *See Graham II*, 2012 WL 3263903, at *1-2 (citing *Powers v. State*, 731 N.W.2d 499, 501 & n.2 (Minn. 2007)). The supreme court explained in *Powers* that the postconviction statute “is broad enough to encompass a motion pursuant to Minn. R. Crim. P. 27.03.” 731 N.W.2d at 501 n.2.

As with the prior rule 27.03 motion, the district court treated Graham’s present motion to correct a clerical mistake under Minn. R. Crim. P. 27.03, subd. 10, as a petition for postconviction relief. We review a district court’s decision to recharacterize the motion as a petition for postconviction relief under an abuse of discretion standard. *Orozco v. State*, 841 N.W.2d 632, 637 (Minn. App. 2014), *pet. for review filed* (Minn. Feb. 4, 2014). *Powers* authorizes the district court to proceed as it did. *Id.* The district

court did not abuse its discretion in treating Graham's motion to correct a clerical mistake as a petition for postconviction relief under Minn. Stat. § 590.01.

“On review of a postconviction decision, we determine whether there is sufficient evidence to support the postconviction court's findings” and “will not overturn the postconviction court's decision unless the court abused its discretion.” *Powers*, 731 N.W.2d at 501.

All matters raised or known at the time of a direct appeal or an earlier petition for postconviction relief will not be considered in a subsequent petition for postconviction relief. *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976). Here, Graham failed to raise his clerical-mistake issue in his two earlier appeals, even though the alleged clerical mistake was known in 2007. Moreover, we have twice previously considered the legality of Graham's sentence. In *Graham II*, Graham made a rule 27.03, subdivision 9 motion, similar to his current motion, and we affirmed the denial of that earlier motion and determined that the sentence was not illegal. 2012 WL 3263903, at *1-2. Graham's arguments in this appeal are similar to those he advanced in *Graham II*. Graham's motion to correct an alleged clerical mistake in his sentence is barred under *Knaffla*.

Graham's motion is also untimely because he failed to raise the clerical mistake issue “within two years of the date the claim [arose].” Minn. Stat. § 590.01, subd. 4(c). If there were any clerical mistake, and we have twice previously determined there was not, it would have arisen in 2007 upon Graham's resentencing. But Graham did not bring “the present matter” until 2013, long after the two-year time limit for bringing

postconviction relief claims. *Id.* And this is not a case similar to *Vazquez v. State*, 822 N.W.2d 313 (Minn. App. 2012), concerning a sentence based on a demonstrable mistake in calculating a criminal history score and resulting in a sentence not authorized by law. Graham, who has twice before appealed his sentence on an argument similar to that which he now advances, provides no persuasive authority for the argument that a “mistake” under rule 27.03, subdivisions 9 and 10, encompasses sentences authorized by the guidelines but with which he disagrees. The district court did not err in concluding that Graham is not entitled to a clerical correction of his sentence.

Graham raises many additional issues in his pro se appellate brief. However, Graham did not present any of those additional issues to the district court. Therefore, we decline to consider them on appeal. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (“This court generally will not decide issues which were not raised before the district court.”).

Affirmed.